

SENATE RECORD VOTE ANALYSIS

106th Congress
2nd Session

Vote No. 40

March 9, 2000, 3:09 p.m.
Page S-1368 Temp. Record

PAEZ NOMINATION/9th Circuit Judge

SUBJECT: Nomination of Richard A. Paez, of California, to be a United States Circuit Judge for the Ninth Circuit. Confirmation.

ACTION: NOMINATION CONFIRMED, 59-39

SYNOPSIS: Richard A. Paez was born May 5, 1947, in Salt Lake City, Utah. He received a B.A. from Brigham Young University in 1969 and a J.D. from the University of California, Berkeley, in 1972. His employment history includes the following: 1972-1974, Staff Attorney, California Rural Legal Assistance; 1974-1976, Staff Attorney, Western Center on Law and Poverty; 1976-1981, Counsel/Director, Legal Aid Foundation of Los Angeles; 1981-1994, Judge, Los Angeles Municipal Court; and 1994-present, United States District Judge, Central District of California.

Those favoring confirmation contended:

Judge Paez is an accomplished jurist whose decisions have been well within the mainstream of American jurisprudence. No matter what individual Senators may think of the record of the Ninth Circuit, they should be very pleased that Judge Paez has been nominated. He has had 19 years of experience as a judge, including 6 years as a Federal court judge. Unfortunately, despite his sterling record, his nomination has been stalled for an ignominious 4 years. Opponents of so-called judicial activism were looking for a Clinton nominee to defeat, and they picked Judge Paez. They poured over his record and found a handful of supposed reasons to vote against him. Those reasons do not bear up under examination.

Their first set of charges are meant to imply that he has been a liberal activist on the bench. For instance, they have said that he is soft on crime based almost entirely on his ruling striking down an ordinance against aggressive panhandling. However, they have not mentioned that his hands were tied in that case by a circuit court ruling. Judges in lower courts are supposed to follow higher court precedents, even when they feel that those precedents are unconstitutional. Our conservative colleagues are constantly preaching to us on the need for judges to follow precedents; Judge Paez has done so, and they are criticizing him for it. If our colleagues really want to know if he is pro-law enforcement, they need look no further than all of the endorsements he has received from police organizations.

(See other side)

YEAS (59)			NAYS (39)		NOT VOTING (2)	
Republicans (14 or 26%)	Democrats (45 or 100%)		Republicans (39 or 74%)	Democrats (0 or 0%)	Republicans (2)	Democrats (0)
Bennett	Akaka	Kennedy	Abraham	Helms	Campbell ² McCain ²	
Chafee	Baucus	Kerrey	Allard	Hutchinson		
Collins	Bayh	Kerry	Ashcroft	Hutchison		
Domenici	Biden	Kohl	Bond	Inhofe		
Gorton	Bingaman	Landrieu	Brownback	Kyl		
Hatch	Boxer	Lautenberg	Bunning	Lott		
Jeffords	Breaux	Leahy	Burns	McConnell		
Lugar	Bryan	Levin	Cochran	Murkowski		
Mack	Byrd	Lieberman	Coverdell	Nickles		
Roth	Cleland	Lincoln	Craig	Roberts		
Smith, Gordon	Conrad	Mikulski	Crapo	Santorum		
Snowe	Daschle	Moynihan	DeWine	Sessions		
Specter	Dodd	Murray	Enzi	Shelby		
Stevens	Dorgan	Reed	Fitzgerald	Smith, Bob		
	Durbin	Reid	Frist	Thomas		
	Edwards	Robb	Gramm	Thompson		
	Feingold	Rockefeller	Grams	Thurmond		
	Feinstein	Sarbanes	Grassley	Voinovich		
	Graham	Schumer	Gregg	Warner		
	Harkin	Torricelli	Hagel			
	Hollings	Wellstone				
	Inouye	Wyden				
	Johnson					

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

Another charge that has been raised against him is that his rulings have been anti-business. This charge is largely based on his refusal to dismiss a case seeking to hold a United States company liable for human rights abuses committed by a foreign government with which it had engaged in a joint venture. Many of us agree that he made a poor decision in that case, but we hasten to add it was only one decision over a 19-year career. We note as well that our colleagues have failed to mention a couple of other controversial decisions Judge Paez has made that could be described as pro-business, such as a decision in favor of Phillip Morris regarding second-hand smoke. One of the claims that our colleagues have made, that he is against having Bibles displayed in a courtroom, is just unfair. In one case he told defendants that they could not try to influence jurors by displaying their Bibles or waving them at them. A judge has a right to try to keep order in his courtroom.

The most serious charges that have been made concern statements he has made outside of the courtroom. For instance, while he was a Federal District judge, he gave a speech in which he attacked two pending ballot initiatives in California. Those initiatives were related to welfare benefits for aliens and racial preferences in State programs. Legitimate questions have been raised concerning whether his comments were consistent with the Judicial Canon governing judges' extra-judicial remarks. Judge Paez has claimed that those comments fit within the exception given for scholarly presentations for purposes of legal education. Some of us are far from convinced, though we are partially reassured by the fact that he has also said, with respect to the review of ballot initiatives, that Federal judges must "proceed with caution, and respect that the vote of the people is presumed constitutional." In yet another comment he implied that he thought it was appropriate for judges to legislate from the bench. However, for 19 years as a judge he has refrained from doing so, and we give that record more weight than one comment.

Another argument that has been raised against this nominee, as it was raised against the previous nominee, is that we should not take the chance of putting another radical liberal onto the Ninth Circuit. Some of us supporting this nominee agree that the Ninth Circuit is out of control, but whether it is or not is irrelevant because Judge Paez himself is not. He will respect the Constitution and precedent on the Ninth Circuit, which is all that we need to consider. He should be confirmed.

Those opposing confirmation contended:

Judge Paez' nomination has been delayed for several years for good reason--he is an extremely controversial nominee who should not be put on any Federal circuit court, let alone the rogue Ninth Circuit. The 56 million people under the boot of that court deserve better. His nomination has been kept pending by his supporters in the hope that, over time, some of the controversies surrounding him would be removed. Instead, as we explained on the previous vote (see vote No. 39), a major new controversy has arisen related to the Clinton/Gore campaign finance scandal. That new controversy, added to some inexcusable decisions he has made and extremely troubling comments he has made, gives us all the more reason to oppose this nominee.

One of the worst decisions Judge Paez ever made was that aggressive panhandling was protected speech under California law. He made that ruling when he struck down a city ban on such begging, which was enacted after a beggar killed a man who refused to give him a quarter. Judge Paez said that law was "facially invalid" even though other Federal judges in California upheld the identical law when it was challenged in their districts. What's next? Will robbers have a free speech right to put a gun in your face and say, "your money or your life?" With decisions such as this one, it is no wonder that the executive director of the American Civil Liberties Union praised his nomination by describing him as "A welcome break after all the pro-law enforcement people we've seen appointed to the State and Federal courts." In another particularly onerous decision, which would wipe out businesses and cost tens of thousands of American jobs if it ever became a national precedent, he refused to throw out an attempt to sue a company for the human rights abuses of a foreign government with which it did business. In many countries ruled by despotic regimes, it is not possible for American companies to engage in business unless they allow those regimes to get involved. To say that an American company should then be found guilty for the crimes of such regimes, in our opinion, is "facially invalid." Judge Paez disagrees. In his topsy-turvy liberal world, it is facially obvious that beggars should be allowed to threaten passersbys to get money as a simple matter of free speech, but it is not at all obvious that businesses that operate in countries with corrupt, violent governments should not be held liable for all the actions of those corrupt, violent governments.

Lest our colleagues think we are being unfair in calling him "liberal," we note that is the term he has applied to himself. We find it hard to disagree with him when we look at the following comments he also has made: "I appreciate the need for courts to act when they must when the issue has been generated as a result of the failure of the political process to resolve a certain political question. There is no choice but for the courts to resolve a question that perhaps ideally and preferably should be resolved through the legislative process." We are astounded by those comments. The Constitution does not say that Congress "ideally" or "preferably" will pass laws, but that judges will be free to step in and make them up themselves when Congress does not pass the laws that they like. No, that power to make laws resides in Congress. Other comments he has made that we believe disqualify him for a circuit judgeship include the blatant political attacks he once launched against two pending ballot initiatives in a public speech. He did not provide any scholarly legal analysis; his rhetoric was biased and inflammatory, and it raised the legitimate concern that if the initiatives passed and came before his court he would just throw them out. He certainly shredded any appearance of impartiality. Thus, it seems that he may not only be willing to overrule legislators in order to make up laws that suit his own biases, he may also be willing to overrule the people themselves by throwing out their votes on ballot initiatives.

Unfortunately, perhaps due in part to the scurrilous race-baiting that has occurred during this debate, some Senators who know that Judge Paez should be rejected may vote in his favor rather than be unfairly labeled anti-Hispanic. We hope that no Senator gives in to this shameful race-baiting. On the merits, this nominee clearly should be rejected.